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ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on South Dakota state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

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Antidote: Civic Responsibility

South Dakota Law

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SD 035 059

Lesson 1

1. Has Aimee violated any state laws? Have her parents?

Aimee has violated no South Dakota law as there is no law which makes a minor liable for an unintentionally dangerous act toward another minor.

Aimee and Carrie's parents, however, may be in violation of the law. It is unlawful for any person, by any act to cause encourage or contribute to the abuse, delinquency or neglect of a minor. SD Codified Laws Ann. §26-9-1 (Supp. 1993). A child is neglected if the parent, guardian or custodian fails or refuses to provide proper or necessary subsistence, supervision, education medical care or any other care necessary for the child's health, guidance or well-being. SD Codified Laws Ann. §26-8A-2 (1992). By leaving Carrie alone with Aimee, the parents might be failing to provide adequate supervision in violation of the law. Factors that must be considered in making the determination include how frequently Aimee was left to care for Carrie and for how long.

2. Does state law allow 17 year old Tyrell to drink a glass of wine with his dinner without his parents' consent?

No. SD Codified Laws Ann. §35-9-2 (1992) prohibits any person under 21 from purchasing, attempting to purchase, possessing or consuming alcoholic beverages except when consumed in a religious ceremony and given to the said person by an authorized person. Thus, Tyrell is barred from drinking wine at dinner.

3. Is Maria violating any law when she tells her roommates whom to call to buy marijuana?

Yes. Possession of marijuana is prohibited in South Dakota. SD Codified Laws Ann. §22-42-6 (Supp. 1993). Maria, while arguably not possessing the marijuana, she provided a critical link for her roommates, thus enabling them to attain possession. Maria could thus be charged with conspiracy. Maria could also be charged under §22-3-3 prohibiting aiding, abetting and advising. Under this section Maria would be treated like a principal and thus be treated as if she was possessing the marijuana.

4. Have Adam and Alex broken any laws other than those against drinking and fighting?

Yes. Since Joe died, the twins will likely be charged with any of a number of charges. The most severe charge might be second degree manslaughter which is any reckless killing of one human being by the act or procurement of another which is neither first degree manslaughter nor murder. SD Codified Laws Ann. §22-16-20 (1992). A less severe charge would be simple assault. "Any person who : (1) attempts to cause

bodily injury to another,. . . and has the actual ability to cause the injury; (2) recklessly causes bodily injury to another; . . . is guilty of simple assault. In light of the death of Joe, simple assault would be a very lenient charge, but may be the charge of which the twins are convicted, depending on the facts.

5. **Has Jose violated any state law even though he is not drinking? Has Carlos or TJ violated any state law?**

Jose, Carlos and TJ may all be in violation of SD Codified Laws Ann. §35-1-9.1 (1992) which makes it unlawful for any person "to have a package or any receptacle containing an alcoholic beverage in his possession in a motor vehicle unless the seal of the original package remains unbroken or the alcoholic beverage is so removed that no occupant of the motor vehicle shall have access to it while the vehicle is in motion." Although only Carlos and TJ are drinking, Jose may still be in violation of the law since he could drink from the container, thus, it is constructively in his possession.

Carlos is in violation of the law if he gave the alcoholic beverage to TJ. SD Codified Laws Ann. §35-9-1.1 (1992). Carlos may be charged with contributing to the delinquency of a minor by encouraging TJ to consume alcohol and drinking with him. SD Codified Laws Ann. §26-9-1 (1992).

TJ is also in violation of South Dakota law. SD Codified Laws Ann. §35-9-2 (1992) prohibits any person under 21 from purchasing, attempting to purchase, possessing or consuming alcoholic beverages except when consumed in a religious ceremony and given to the said person by an authorized person.

6. **Is Dr. Melrose violating any state or federal law by prescribing pain killers without conducting an examination or determining need?**

Dr. Melrose is violating not only state law, but federal law too. Under 21 U.S.C.A. § 829, a physician must have a legitimate medical purpose for dispensing drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional conduct. U.S. v. Varma, 691 F.2d 460 (1982), U.S. v. Jamieson, 605 F. Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide him with a bona fide reason for needing the painkillers, may also be breaking the law. 21 U.S.C.A. § 843 prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

Dr. Melrose, additionally, is violating South Dakota law which requires that not controlled substance or substance included in Schedule II, III or IV may be distributed or dispensed other than for medical purposes. SD Codified Laws Ann. §22-42-4.2 (1992). The doctor's dispensing of controlled

substances without a valid, good faith medical need on the part of the patients is in clear violation of this law.

7. Is Danielle violating any law by taking only one or two pills from someone else's prescription?

Danielle is violating several state and federal laws. Since she is in effect dispensing prescription drugs to herself, she is violating 21 U.S.C.A. § 829, which prohibits dispensing any controlled substance which is a prescription drug without the written prescription of a practitioner. She is also violating 21 U.S.C.A. § 843, which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge and 21 U.S.C.A. § 844 which prohibits simple possession of a controlled substance unless such a substance was obtained by a prescription. The seriousness of her crime under federal drug control laws will depend on the type of drug which she is taking and how the drugs are used.

Danielle is also breaking South Dakota laws. Possession of controlled substances is illegal unless they are obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice. SD Codified Laws Ann. §22-42-5 (1992). Obtaining possession of controlled substances by theft, fraud, misrepresentation or forgery is a violation of SD Codified Laws §22-42-8 (1992). "Any person who takes, or exercises control over, property of another with intent to deprive him of it, is guilty of theft." SD Codified Laws Ann. §22-30A-1 (1992).

8. Is Renee breaking any law even though she is not selling drugs herself?

Even thought she is not selling drugs directly, Renee is violating several state and federal laws. She is violating 21 U.S.C.A. § 841 prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense drugs and 21 U.S.C.A. § 844 prohibiting simple possession of a controlled substance.

Renee could receive an increased sentence in accordance with the federal sentencing guidelines as a result of her using children in her scheme. Under 21 U.S.C.A. § 859, the distribution of a controlled substance to a person under 21 year of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860, which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 also provides for increased sentences in cases of abuse of one's position of trust, as in a drug trafficking defendant involving her daughter in the drug

trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

Possession of controlled substances is illegal unless they are obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of his professional practice. SD Codified Laws Ann. §22-42-5 (1992). Additionally, selling drugs "in, on or within 500 feet of real property comprising a public or private elementary or secondary school or playground" results in the commission of a felony. SD Codified Laws Ann. §22-42-19 (Supp. 1993). Renee may also be contributing to the delinquency of a minor, Mary, by making Mary deliver drugs on the playground. SD Codified Laws Ann. §26-9-1 (1992).

9. Did Jim violate any law other than those regarding controlled substances?

Their heroin use is a felony under federal drug-control statutes. 21 U.S.C.A. § 841 prohibits possession of a controlled substance with the intent to manufacture, distribute or dispense such substance. 21 U.S.C.A. § 844 prohibits simple possession of a controlled substance.

Jim transmitted the HIV virus to Andre through the shared needle. South Dakota has not yet dealt with this issue. Under the Model Penal Code, however, Jim's behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, AIDS: Public Health and the Criminal Law, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, AIDS: Dealing With the Plague, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. Brock v. State, 555 So.2d 285 (Ala. Crim. App. 1989).

Presently, Jim is only violating South Dakota's prohibition against knowingly using or possessing drug paraphernalia to introduce a controlled substance into the body. SD Codified Laws Ann. §22-42A-3 (1992).

10. Has the bartender or owner of Bulldog's Bar & Grill violated any law?

Yes. Both the bartender and owner are in violation of SD Codified Laws Ann. §35-4-78 (1992) for selling an alcoholic beverage to an obviously intoxicated person. While both, if convicted will be criminally liable, neither can be held civilly liable to the injured person or his/her estate for injury suffered or property damaged because of the intoxication of the person due to the sale of alcoholic beverages. Id.

Lesson 2

CRIMINAL JUSTICE STATISTICS:
DRUG AND ALCOHOL RELATED OFFENSES
UNIFORM CRIME REPORT DATA OF 1990--CRIME IN THE UNITED STATES

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% **decrease** in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% **increase** from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically **increased** to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

Criminal Victimization in the United States, 1990
A National Crime Victimization Survey Report, February, 1992

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- Of the **130,260** total rapes reported by victims to police, **49.8%** were believed to be committed by someone under the influence of drugs or alcohol.
- Of a total of **1,149,710** reported robberies, **24.2%** involved an offender under the influence of drugs or alcohol.
- Of **1,600,760** aggravated assaults committed **40%** were committed by people under the influence of drugs.
- Of the **3,128,130** simple assaults reported, **32.9%** were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	$25,000	15yrs + $25,000
schedule 2	15 years	$25,000	15yrs + $25,000
schedule 3	5 years	$15,000	5yrs + $15,000
schedule 4	3 years	$10,000	3yrs + $10,000
schedule 5	1 year	$ 5,000	1yr + $ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1[1]	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine[2]	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1
Massachusetts[3]	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2

[1] Must have more than 15% THC (tetrahydrocannobinol), the chemical in the cannabis plant.

[2] Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

[3] Massachusetts calls their schedules classes, but they are the same thing.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada[4]	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2
South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2

[4] While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

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States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

Lesson 5

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	• imprisonment for 1 to 10 years, and • possibility of fine not to exceed $10,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	• imprisonment not to exceed 5 years, and • possibility of a fine not to exceed $5000
First Offense: Codeine - Possession - 200 mg	• imprisonment not to exceed 5 years, and •possibility of a fine not to exceed $5000
Second Offense: Marijuana - Possession - 50 kg	• imprisonment of at least 10 years, and •possibility of a fine not to exceed $10,000
Third Offense - Methamphetamine - Possession - 100 g	• imprisonment of 1 to 5 years, and • a fine not to exceed $5000

Cite: S.D. Codified Laws § 22-42-2.

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed $250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed $500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed $8 million.

Cite: 21 U.S.C. § 841 (1992).

Lesson 6 & 7

1. **What does DWI stand for?**

Driving while intoxicated.

2. **What does DUI stand for?**

Driving under the influence. Under §32-23-1 it is illegal to drive while under the influence of alcohol or with a BAC of 0.10 or more.

3. **In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?**

Under South Dakota law there is no distinction.

4. **What are the penalties for being convicted of DWI? DUI?**

CODE	CONVICTION	CLASSIFICATION	PUNISHMENT
§32-23-2	first	Cl. 1 Misdemeanor	• up to one year imprisonment, and/or • up to $1000 fine, and • license revoked for not less than 30 days, but work permit allowed
§32-23-3	second	Cl. 1 Misdemeanor	• up to one year imprisonment, and/or • up to $1000 fine, and • license revoked for not less than 1 year; no work permit allowed
§32-23-4	third	Cl. 6 Felony	• up to 2 years imprisonment, and/or • up to $2000 fine , and • driving privileges unconditionally revoked for a period determined by the court, but not less than 1 year
§ 32-23-4.6	fourth & subsequent	Cl. 5 Felony	• up to 5 years imprisonment, and/or • up to $5000 fine, and • driving privileges unconditionally revoked for a period determined by the court, but not less than 2 years

5. **What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?**

Under §32-23-10 any person who drives in South Dakota is deemed to have given consent to a breath test. Refusal to take the test will result in license suspension for 1 year.

6. **What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated?**

A person's BAC must be 0.10 to be legally intoxicated in South Dakota.

7. **The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?**

False. South Dakota law does not provide a lower BAC for persons under 21.

8. **An open container of alcohol can be in your car if you are 21 or over. True or False?**

False. Section 35-1-9.1 states that it is a Class 2 Misdemeanor for any person to have any receptacle containing an alcoholic beverage in his/her possession in a motor vehicle unless the seal of the original package is unbroken or unless the beverage is so removed that no one can have access to it while the vehicle is in motion. A Class 2 Misdemeanor has a maximum possible penalty of 30 days imprisonment in a county jail and or a fine of up to $200.

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South Dakota Law

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,

- Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, ON, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do no prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

0.00 BAC	0.01 BAC	0.02 BAC	0.04 BAC	0.05 BAC	0.06 BAC
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

ID: minors <16 can drive during the daytime only
IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am:6am Fri-Sun
MD: minors <16 cannot drive between 12am-5am
MA: minors <18 cannot drive between 1am-4am
NY: minors <18 cannot drive between 9pm-5am
PA: minors <18 cannot drive between 12am-5am
SD: minors <16 cannot drive between 8pm-6am.

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